

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 3385 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE D.C.SRIVASTAVA
and
Hon'ble MR.JUSTICE H.K.RATHOD

- =====
1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
 5. Whether it is to be circulated to the Civil Judge? : NO

NEW INDIA ASSURANCE CO.LTD.

Versus

ZAFERBHAI RASULBHAI MALEK

Appearance:

MR RAJNI H MEHTA for Petitioners
MR CHETAN K PANDYA for Respondent No. 1

CORAM : MR.JUSTICE D.C.SRIVASTAVA
and
MR.JUSTICE H.K.RATHOD

Date of decision: 01/03/2000

ORAL JUDGEMENT

Sri Rajni H. Mehta, learned counsel for the appellant, Shri B.G.Jani and C.K.Pandya, learned counsel for the respondents have been heard on the admission of this appeal.

This appeal is directed against the judgment and order dated 27th February, 1998 rendered by the Judge, City Civil Court at Ahmedabad granting decree of Rs.1,30,000/- in favour of the plaintiff against the defendants.

At the time of admission of this appeal, learned counsel for the appellant has pointed out certain dates and raised two submissions for admission of the appeal. The truck in question was set to fire on 16.6.1985 and the claim was repudiated on 11.9.1986. The suit out of which the present appeal arise was filed in forma pauperis (as an indigent person) on 10.9.1987. The suit was registered on 29.9.1988 after allowing the application under Order 33 of the Code of Civil Procedure. On these facts, the contention of learned counsel Mr. Mehta that the suit was beyond the period of limitation does not carry any merit because the limitation will be computed from the date of the suit alongwith the application for permission to sue as an indigent person. Consequently, we do not find any merit in the contention that the suit was time barred.

As regards the second contention, since the accident took place on 16.6.1985 and the policy was in force with effect from 8.6.1985, prima facie, it cannot be said that the insurance policy was not in force on the date of the accident. No evidence has been adduced by the appellant in the trial court that any fraud was practised by the person insured in obtaining the policy of insurance. The fraud has to be established by cogent evidence, direct as well as circumstantial. In the absence of such evidence of fraud, the Court below was justified in rejecting this plea. No other point is involved for adjudication in this appeal. As such, the appeal is dismissed at admission stage with no order as to costs.

At this stage, learned counsel Mr. Mehta has intimated that he had already deposited Rs.2,76,649.00. Learned counsel Mr. Pandya submitted that this amount may be ordered to be paid but the same has been objected by learned counsel Mr. Jani in view of the fact that the truck in question was hypothecated with the Bombay Mercantile Bank Ltd. According to Mr. Jani, decree has been obtained from the Board of Nominees against the

plaintiffs respondents herein and recovery certificate has been issued to the tune of Rs. 1,34,783.00. It is informed that the appellant has deposited an amount in the executing court and execution proceedings are pending. It is also informed that an application has been moved in the executing court for impleadment of the bank as a party. In view of the order of the trial court dated 27.11.1991, the executing court shall, in these circumstances, take up the application of the bank for disposal expeditiously and after the application is disposed of and the bank is brought on record as a party in the execution proceedings for which there should be no difficulty before the executing court in view of the order passed by this court on the application for impleadment of the bank in this appeal. A sum of Rs. 1,34,783.00 will be paid to the Bank so impleaded here on the execution side. Out of the remaining amount of Rs. 1,76,649.00, the executing court shall pay a sum of Rs. 76,649.00 to the decree holder, plaintiff and shall retain rest of the amount. In view of the statement of the learned counsel Mr. Jani and Mr. Pandya that talks are going on for settlement between the parties and after the settlement regarding quantum of interest, amount of interest so accrued shall be paid to the Bombay Mercantile Bank Ltd. and the remaining amount, if any, shall be paid to the decree holder, plaintiff. With these observations, the appeal is dismissed with no order as to costs.

01.03.2000. (D.C.Srivastava,J.)

(H.K.Rathod,J.)

Vyas